

Amounts distributed by a real estate investment trust, within the meaning of section 856 of the Internal Revenue Code of 1954, to an exempt employees' pension trust do not constitute unrelated business taxable income where the distributions were made out of the earnings and profits of the real estate investment trust and hence were dividends.

Advice has been requested whether amounts distributed by a real estate investment trust to an exempt employees' pension trust constitute unrelated business taxable income.

An exempt employees' pension trust invested some of its funds in shares of beneficial interest in a real estate investment trust, which qualified as such under section 856 of the Internal Revenue Code of 1954. Distributions, based upon these shares, were made to the pension trust by the real estate investment trust.

The investment here involved does not differ in any material way from investments in shares of stock of an incorporated enterprise. See in that regard section 1.856-1(e) of the Income Tax Regulations, which makes it clear that other provisions of the subchapter dealing with real estate investment trusts, and particularly the provisions of subchapter C pertaining to corporate distributions, are applicable with respect to both real estate investment trusts and their shareholders in the same manner that they would apply to any other unincorporated trust which would be taxable as a domestic corporation.

The distributions by the real estate investment trust were made out of its earnings and profits, and hence were dividends as defined in section 316 of the Code. They could not represent income to the pension trust from an unrelated trade or business since section 512(b) of the Code specifically provides that all dividends are to be excluded in computing unrelated business taxable income.

Accordingly, it is held that amounts distributed by a qualified real estate investment trust to an exempt employees' pension trust, as the holder of shares of beneficial interest, do not constitute unrelated business taxable income.